Editor's note: Reconsideration denied by Order dated March 23, 1998

HUNT PETROLEUM CORP.

IBLA 97-40 Decided December 4, 1997

Appeals from a decision of the Minerals Management Service denying requests by Federal lessees for refund of royalty payments. MMS-92-0139-OCS.

Affirmed.

1. Outer Continental Shelf Lands Act: Refunds

The MMS properly continued to hold royalty overpayments by Federal lessees pending completion of a restructured accounting of three oil and gas leases to permit effective pursuit of debt satisfaction by offset when the accounts were ready to be finally settled.

APPEARANCES: Jonathan A. Hunter, Esq., New Orleans, Louisiana, for Hunt Petroleum Corporation, Hunt Industries, Ltd., Rosewood Resources, The George R. Brown Partnership, and Texaco Exploration and Production Inc.; Geoffrey Heath, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, DC, for Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Hunt Petroleum Corporation and four other owners of interests in Outer Continental leases numbered 2310, 2311, and 2600 have appealed from an April 26, 1996, Decision by an Associate Director of Minerals Management Service (MMS) denying a refund of $274,148.51 in royalty overpayments claimed by Appellants. Finding overpayments were made, MMS nonetheless concluded there could also be offsetting underpayments on the leases at issue in undetermined amounts not yet settled, so that a case for refund had yet to be demonstrated; it was determined that, given the state of the accounts for the leases, it "would be inappropriate to grant a refund." (Decision at 2.)

In January 1985, Placid Oil Company (Placid), the operator of the three leases, requested a refund of $549,815.15 in royalty payments paid to MMS on behalf of Placid and co-lessees, including Appellants. The request was made in reliance on a court-ordered reduction in the price of natural gas. This refund request was denied, and Placid filed an appeal with MMS. Two audits were then conducted by MMS. The first audit covered the period

from October 1979 through September 1981 and resulted in an August 18, 1986, Order to Placid to pay $274,907.41 in underpaid royalty for the leases. Placid operated the Patterson II Gas Plant (Patterson II) where gas from the leases was processed into natural gas liquid products (NGLP). The 1986 MMS Order rested on a finding that royalty owed on NGLP processed at Patterson II was underpaid by Placid for a number of reasons connected with operations at the plant.

A second audit of operations at Patterson II between October 1981 and September 1985 resulted in another Order to Placid on May 11, 1990. Finding there was reason to believe Placid had again made substantial underpayments of royalty on NGLP processed at Patterson II, MMS ordered Placid to recalculate, report, and pay royalty for production from the three leases here at issue. See Order dated May 11, 1990, at 5. Placid made part of the recalculation and filed a petition in bankruptcy. The MMS then issued an Order on May 1, 1992, that required Placid to pay $255,624.51 for underpaid royalties on the three leases. The May 1992 Order explained that this amount was fixed by a bankruptcy court Order that limited Placid's royalty liability to MMS. Placid and MMS then reached an agreed settlement of the amount owed by Placid for underpayment of royalty on production from the three leases, and Placid's appeal pending before MMS was withdrawn.

While the Placid appeal was pending before MMS, however, Appellants intervened therein, and now claim entitlement, as co-lessees, to a refund of $274,148.51 in their own right. On April 21, 1992, MMS issued Orders to Appellants finding that Placid's co-lessees owed $2,054,555.52 in royalty for production from October 1981 through September 1985. This finding was based on the partial restructured accounting by Placid, which remains to be completed.

Appellants now point out that the Associate Director's Decision here under review mistakenly indicates the 1986 and 1990 pay Orders directed to Placid apply to Appellants, but that the referenced Orders were settled when the Placid account with MMS was settled. Appellants also contend that, as to lease No. 2600, there is no underpayment issue. They also allege that MMS has conceded that each lessee can be held liable only for a proportionate share of outstanding royalty and that royalty owed for production from the leases has been overpaid, not underpaid. They conclude that their refund requests made 12 years ago should now be paid.

[1] It is conceded by MMS that the Associate Director erroneously mentioned two Orders issued to Placid when she rejected Appellants' refund requests. The MMS also admits that each lessee is responsible for no more than a proportionate share of the leases according to the ownership interest held by each Appellant during the time at issue. Nonetheless, as MMS points out, this error is not material to our disposition of this appeal, because the question whether there was an underpayment of royalty for all three leases persists so long as the accounting for royalty payment on all three leases remains incomplete. See Amoco Production Co. v. Fry, 118 F.3d 812, 817 (D.C. Cir. 1997) (approving refusal of royalty refunds by the Department under circumstances similar to those here, if the overpayments

are held "not permanently and absolutely" provided the purpose of keeping the money is to protect the right of MMS to offset the overpayment against anticipated underpayments).

In the instant case, since the accounting for the three leases remains incomplete, until Appellants complete the necessary restructured accounting, there can be no refund. Id. On the record before us, it is apparent that the Associate Director properly denied Appellants' refund requests.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

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Franklin D. Arness
Administrative Judge

I concur:

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Gail M. Frazier
Administrative Judge